

**INTHEUNITEDSTATESDISTRICTCOURT
FORTHEEASTERNDISTRICTOFPENNSYLVANIA**

MICHAEL EARY, Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
WILLIAM A. HALTER Acting Commissioner of Social Security, Defendant.	:	NO. 00-2910

Brody, J.

June 18, 2001

MEMORANDUM AND ORDER

The issue before me is whether an unfavorable determination by the Commissioner of Social Security regarding plaintiff's entitlement to disability benefits that both parties agree was not made in accordance with applicable law warrants reversal and award of benefits, or rather should be remanded for further administrative review. Plaintiff Michael Eary ("Eary") filed a motion for summary judgment requesting reversal of a final administrative decision that he is not entitled to disability benefits as of December 15, 1990. In the alternative, Eary seeks remand to the Commissioner for a new hearing. ¹The Commissioner acknowledges that further evaluation of Eary's claim is warranted and supports remand. Eary, however, has pressed his request for

¹Eary seeks judicial review of the Commissioner's decision pursuant to Title 42 U.S.C. § 405(g), which provides:

"Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such actions shall be brought in the district court of the United States for the judicial district in which the plaintiff resides."

reversal. For the reasons that follow, I will remand this case for a new administrative hearing.

I. Factual Background

On March 31, 1993, Eary filed an application for disability insurance benefits under Title II of the Social Security Act, alleging that he became disabled on December 15, 1990. The Social Security Administration denied his request for benefits with respect to the period from December 15, 1990 through January 24, 1993, but granted his application with respect to the period commencing on January 25, 1993. Eary sought review of this determination by an Administrative Law Judge (“ALJ”). The ALJ rejected Eary’s assertion that he is entitled to disability benefits from December 15, 1990, affirming the decision to grant benefits for the period commencing on January 25, 1993.

The following facts upon which the ALJ based his decision are relevant to my review:

- Eary was born on May 31, 1949.
- Eary worked from 1972 to 1990 as a warehouseman. He stopped working on December 15, 1990, and has not worked since.
- Eary has long suffered from bronchial asthma, hepatitis C, hypertension, acute alcoholism and alcoholic liver disease.
- In 1981, Eary underwent a Spirometry study and was diagnosed as having “moderately severe chronic obstructive lung disease.” (R.293).
- Dr. Louise Kuklinsky was Eary’s family doctor from June, 1987 to January, 1993. Dr. Kuklinsky’s reports in the record indicate that Eary came to see her in December, 1990 because he was having difficulty breathing at work. Eary continued to seek treatment from Dr. Kuklinsky for all of his ailments between 1990 and 1993.
- From December 24, 1990 to December 31, 1990, Eary was admitted to Doylestown Hospital with a list of ailments, including acute asthmatic bronchitis, chronic obstructive pulmonary disease with asthma, a history of alcoholism, etc.
- Eary again underwent a Spirometry study in May 1993 and a Pulmonary Function test in

June 1993. The 1993 tests revealed that Eary met these severity requirements of “Chronic Obstructive Pulmonary Disease” (“COPD”), listed in the federal regulations as an impairment that is presumed disabling. See 20 C.F.R. Part 404, Subpart P, Appendix 1, § 3.02A.

- Dr. Steven M. Albelda reviewed Eary’s medical records at plaintiff’s request prior to the administrative hearing. Dr. Albelda opined “to a reasonable degree of medical certainty that Mr. Eary’s lung disease met the Social Security listing for Chronic Obstructive Pulmonary Disease (COPD) prior to December 1990.” (R. 257). Dr. Albelda based his opinion on a comparison of Eary’s two pulmonary function tests, the first in 1981 and the second in 1993, from which he calculated the average loss of lung function per year. Dr. Albelda supported his calculation with literature from a medical journal that provided predictions about the rate of loss of lung function. Dr. Albelda opined that Eary met the listing requirements as early as 1988.
- Eary testified before the ALJ that he stopped working in December 1990 because of shortness of breath. He also testified with respect to his alcohol addiction. Eary stated that he was “pretty straight” from December 1990 to January 1993 and that he quit drinking in June 1994, when he went to the emergency room with liver problems.
- From May 1990 until June 1990, Eary checked himself into Valley Forge Medical Center for detoxification from abuse of cocaine and alcohol.
- Dr. Kuklinsky’s records note that Eary was arrested sometime in 1990 for drunk driving.
- In April 1993, Eary was admitted to Medical College Hospital for detoxification. At the hospital, Eary admitted to continuous consumption of “three six-pack every third day and two fifths of whiskey per week for the past 32 years.” (R. 17)

II. Administrative Review

The Social Security Act defines “disability” as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.”⁴² U.S.C. § 423(d)(1)(A). The Act explicitly exempts an individual from coverage if alcoholism or drug addiction is a “contributing factor material to the Commissioner’s determination that the individual is disabled.”⁴² U.S.C. § 423(d)(C). Under the regulations promulgated by the Social Security Administration, the Commissioner is to follow a 5-step sequential evaluation

process in determining whether a claimant is disabled under the Act:

1. The Commissioner must determine whether the claimant is currently engaging in substantial gainful activity. If the claimant is engaged in substantial gainful activity, the claim is denied.
2. The Commissioner must determine whether the claimant is suffering from a severe impairment or combination of impairments which significantly limits physical or mental ability to do basic work activities. If the claimant is not suffering from a severe impairment, the claim is denied.
3. The Commissioner must compare the medical evidence of the claimant's impairment to the impairments listed in the regulation that are presumed severe enough to preclude substantial gainful activity. If the claimant meets the requirements of a listed impairment, then the claimant is entitled to benefits. If the claimant does not meet the requirements of a listed impairment, the analysis proceeds to steps four and five.
4. The Commissioner must determine whether the claimant retains the residual functional capacity to meet the physical and mental demands of his past relevant work.
5. If the claimant shows that he is unable to return to his past relevant work, the Commissioner must demonstrate that the claimant is capable of performing other jobs that exist in the national economy.

20 C.F.R. § 404.1520. *See also, Plummerv. Apfel*, 186 F.3d 422, 428 (3d Cir. 1999). Through step four of the evaluation, the burden is on the claimant. If the claimant proves that he is unable to return to his past work, the burden shifts to the Commissioner to show that the claimant is capable of performing other available jobs. *See id.* If the claimant is determined to be “disabled” at any stage of the evaluation and there is evidence of drug or alcohol addiction, the ALJ must then determine whether the claimant would still be found disabled if he stopped using drugs or alcohol. *See* 20 C.F.R. § 404.1535(b)(1).

The ALJ affirmed the determination that Eary is not entitled to disability benefits as of December 15, 1990, but only for the period commencing on January 25, 1993. The ALJ

determined that Eary had met this burden with respect to the first and second steps of the sequential evaluation: Eary has not performed any substantial gainful activity since December 15, 1990; and the medical evidence of record establishes that Eary has suffered from severe alcohol addiction, bronchial asthma, and chronic obstructive pulmonary disease, which have limited his ability to do basic work activities since December 15, 1990. At step three of the evaluation, the ALJ found that Eary met the listing requirements for COPD as of January 25, 1993.² Thus, Eary was deemed disabled as of January 25, 1993.

With respect to Eary's allegation that he was disabled as of December 15, 1990, the ALJ rejected Dr. Albelda's opinion, concluding that the medical evidence of record did not support a finding that Eary met the severity requirements of CPOD before January 25, 1993. The only evidence in the record that the ALJ cited in support of this finding was a note from Dr. Kuklinsky dated January 1993, indicating slight improvement in Eary's lung condition. The ALJ discounted Dr. Albelda's opinion, stating that "[a]lthough it is possible that Dr. Albelda's conclusion could be accurate, it is also possible that it is not, because it is only a mathematical calculation, and is not based on any specific evidence of the claimant's breathing impairment from December 1990 to January 1993. (R. 19).

With respect to the period of December 15, 1990 to January 24, 1993, the ALJ proceeded to steps four and five of the sequential evaluation. The ALJ determined that Eary has been disabled since December 15, 1990, but that Eary would not have been disabled from December

²This finding was based on the results of the tests Eary underwent in May and June of 1993. The ALJ noted that the State Agency concluded from these tests that it was reasonable to infer that Eary's breathing impairment met the severity requirements of section 3.02A as early as five months before the date of the tests. The Agency, therefore, established January 25, 1993 as the date of onset of Eary's disability. The ALJ adopted the Agency's position.

15, 1990 through January 24, 1993 had he stopped using alcohol. According to the ALJ, “the evidence establishes that without the claimant’s abuse of alcohol, his other impairments would not have significantly limited his ability to perform the duties of his past work as a warehouseman, and pursuant to 20 C.F.R. § 404.1520(e), he would not be disabled.” (R.20). The ALJ discredited Eary’s testimony because his statement that he was “pretty straight” from December 1990 to January 1993 was not supported by the record. (R.18, emphasizing Eary’s admission while at Medical College Hospital in 1993 to continuous and heavy consumption of alcohol). The ALJ concluded that Eary is not entitled to benefits for this period because alcoholism was “a contributing factor material to the determination of [his] disability.” (R.20).

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III. Discussion

When reviewing a final decision denying disability benefits, a court must determine whether the denial is supported by “substantial evidence.” *See Plummer*, 186 F.3d at 427. The Third Circuit recently explained the standard of review as follows:

“The Court is bound by the ALJ’s findings of fact if they are supported by substantial evidence in the record. 42 U.S.C. § 405(g); *Doak v. Heckler*, 790 F.2d 26, 28 (3d Cir. 1986). Substantial evidence has been defined as “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate.” *Ventura v. Shalala*, 55 F.3d 900, 901 (3d Cir. 1995) (quoting *Richardson v. Perales*, 402 U.S. 389, 401, 91 S.Ct. 1420, 1427, 28 L.Ed.2d 842 (1971)).”

Id. Upon such a review, I have authority to “enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g).

³Title 20 C.F.R. § 404.1520(e) corresponds to step four of these sequential evaluation, in which the claimant must show that he is unable to perform past relevant work.

Eary's motion for summary judgment alleges that the ALJ's decision that he is not entitled to disability benefits for the period December 15, 1990 to January 24, 1993 is based on errors of law and not supported by substantial evidence. Eary's objection to the ALJ's decision can be grouped into two essential arguments: (1) The ALJ's determination at step three of the evaluation that Eary did not meet the severity requirements of the listed impairment COPD prior to January 25, 1993 was in error. In particular, Eary argues that Dr. Kuklinsky's reports and other corroborative medical evidence establish that Eary met the requirements of the listed impairment COPD by December 15, 1990; the ALJ improperly discounted the opinion of Dr. Kuklinsky regarding the severity of Eary's disability as of December 15, 1990; and the ALJ was required to consult a medical expert to advise him as to the onset date of Eary's disability. (2) The ALJ's conclusion that alcoholism materially contributed to the determination that Eary was disabled before January 25, 1993 was erroneous. In particular, Eary argues that the ALJ failed to follow applicable federal regulations and the ALJ's adverse credibility finding with respect to Eary's testimony was improper and not supported by the record.

Defendant acknowledges that the ALJ failed to consult a medical expert to assist with determining the onset date of Eary's disability, that the ALJ failed to consider the impact of Eary's alcoholism in accordance with federal regulations, and that further evaluation of Eary's claim is warranted. Because the ALJ's decision was not made in accordance with applicable law, remand for a new administrative hearing is appropriate.

At step three of the evaluation, the ALJ determined that Eary met the severity requirements for COPD as of January 25, 1993, but rejected Eary's contention that his pulmonary disease met the severity requirements as of December 15, 1990. The ALJ was required to make

this determination on a “legitimate medical basis” and to obtain the assistance of a medical expert. See *Walton v. Halter*, 243 F.3d 703, 708 (3d Cir. 2001) (quoting Social Security Ruling 83-20).⁴

The ALJ failed to fulfill this duty. Without the assistance of a medical expert, the ALJ rejected the opinion of plaintiff’s expert, Dr. Albelda, that Eary met the severity requirements of CPOD prior to December 15, 1990. The ALJ did not adequately explain how the reports of Eary’s treating physician, Dr. Kuklinsky, either were consistent with his determination or why he chose to discredit them. “A cardinal principle guiding disability eligibility determinations is that the ALJ accord treating physicians’ reports great weight.” *Morales v. Apfel*, 225 F.3d 310, 317 (3d Cir. 2000). An ALJ may reject a treating physician’s opinion “‘only on the basis of contradictory medical evidence’ and not due to his[] own credibility judgments, speculation or lay opinion.” *Id.* (quoting *Plummer*, 186 F.3d at 429). The ALJ further failed to explain or

⁴These requirements are set forth in Social Security Ruling (“SSR”) 83-20, which states in relevant part:

“With slowly progressive impairments, it is sometimes impossible to obtain medical evidence establishing the precise date an impairment became disabling.... In such cases, it will be necessary to infer the onset date from the medical and other evidence that describe the history and symptomatology of the disease process....

How long the disease may be determined to have existed at a disabling level of severity depends on an informed judgment of the facts in the particular case. This judgment, however, must have a legitimate medical basis. At the hearing, the administrative law judge (ALJ) should call on the services of a medical advisor when onset must be inferred.”

Walton v. Halter, 243 F.3d 703, 708 (3d Cir. 2001). CPOD is a slowly progressive impairment. Because Eary was diagnosed with CPOD in 1993, but had not previously been diagnosed since 1981, it was necessary to infer the onset date of Eary’s CPOD.

support this determination with medical evidence in the record. ⁵

At step four of the sequential evaluation, the ALJ found that Eary was not capable of performing his past relevant work as a warehouseman since December 15, 1990. The ALJ further found that the Commissioner could not meet its burden of showing that Eary could perform other job that existed in the national economy. According to the ALJ, Eary was disabled under the laws since December 1990. However, the ALJ then found that the evidence establishes that, from December 15, 1990 until January 24, 1993 Eary's alcoholism was a contributing factor material to the determination of Eary's disability.

The ALJ failed to explain this conclusion in accordance with applicable federal regulations. *See* 20 C.F.R. §404.1535. These regulations state that "[t]he key factor we will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find you disabled if you stopped using drugs or alcohol." 20 C.F.R. §404.1535(b)(1). The ALJ cites substantial evidence in the record that Eary suffered from severe alcoholism during the relevant period. However, the ALJ fails to provide support for the conclusion that, if Eary had stopped using alcohol, he would have been able to return to his past relevant work or would have been capable of performing other job that exist in the national economy. Moreover, while admitting that he had struggled with alcoholism, Eary testified that his condition improved by December 1990. Before December 15, 1990, Eary's alcoholism had not prevented him from working. Although the ALJ concluded that

⁵The 1993 note from Dr. Kuklinsky that the ALJ cited in support of his finding was, in fact, inconsistent with the ALJ's determination that Eary was disabled as of January 25, 1993. The ALJ failed to cite any medical evidence in the record from the relevant period (December 15, 1990 to January 24, 1993) in support of his determination as to the onset date of Eary's disability.

Eary's testimony was not credible, the ALJ failed to explain this conclusion adequately.

The ALJ must analyze all of the evidence in the record and provide an adequate explanation for disregarding evidence. *See Adornov. Shalala*, 40 F.3d 43 (3d Cir. 1994). Where evidence conflicts, the ALJ may choose whom to credit, but "cannot reject evidence for no reason or for the wrong reason." *Morales*, 225 F.3d at 317. In addition, the ALJ must set out a specific factual basis for each finding. *See Baergav. Richardson*, 500 F.2d 309 (3d Cir. 1974). Simply referring to "the record" is insufficient. *See Abshirev. Bowen*, 662 F.Supp. 8 (E.D. Pa. 1986). Because the ALJ's decision was not in accordance with applicable law, remand for a new administrative hearing is warranted.

Eary argues, however, that there is substantial evidence in the record to support a disability onset date of December 15, 1990, calling for an award of benefits as of this date. In support of this assertion, Eary cites the opinion of Dr. Albeld that Eary likely met the severity requirements of CPOD as early as 1988. Eary also argues that Dr. Kuklinsky's reports regarding the severity of Eary's pulmonary disease before January 1993 support such a finding.

The decision to reverse an unfavorable determination and award benefits to the claimant "should be made only when the administrative record of the case has been fully developed and when substantial evidence on the record as a whole indicates that the claimant is disabled and entitled to benefits." *Podedwornyv. Harris*, 745 F.2d, 210221-22 (3d Cir. 1984). The cases in which the Third Circuit has decided to forego remand and award benefits are cases in which the Commissioner has previously had ample opportunity to develop the record and has failed repeatedly to explain or support its determination with substantial evidence, or where substantial evidence exists in the record to support an award of benefits. *See, e.g., Morales*, 225 F.3d at 320 ;

Podedworny, 745 F.2d at 213; *Woody v. Secretary of Health and Human Services*, 859 F.2d 1156 (3d Cir. 1988). Indeed, Judge Adams reinforced in his concurrence in *Podedworny* that “[a] reversal, as opposed to a remand, is in order only where a fully developed administrative record demonstrates that the claimant is clearly entitled to benefits, and thus a new administrative hearing would serve no useful purpose.” 745 F.2d at 224.

In this case, the administrative record is not fully developed, the record does not contain substantial evidence supporting an award of benefits, and remand for a new hearing would serve the vital purpose of allowing further expert testimony. The plaintiff acknowledges that the ALJ’s rejection of Dr. Albelda’s expert opinion in the absence of substantial medical evidence to the contrary “constituted a failure to discharge his duty to develop the record.” Plaintiff’s Motion for Summary Judgment at 11. Medical evidence from the relevant period, December 15, 1990 to January 24, 1993, is scant and inconclusive. Further expert testimony to evaluate the onset date of Eary’s disability is necessary to make a proper determination.

Recent Third Circuit case law also supports a remand. In *Walton v. Halter*, 243 F.3d 703 (3d Cir. 2001), the ALJ similarly determined the onset date of a slowly progressing disability to be later than alleged by the claimant, but failed to enlist the services of a medical expert. In that case, the court found that all of the medical evidence of records suggested an onset date consistent with the claimant’s allegation, but remanded for a new hearing. *Id.* at 709; see also *Spellman v. Shalala*, 1 F.3d 357, 363, n.10 (5th Cir. 1993) (“a remand is necessary because the Secretary must redetermine the onset date after consulting a medical advisor”). Similarly, in *Jesurun v. Secretary of the United States Dept. of Health and Human Services*, 48 F.3d 114 (3d Cir. 1995), the ALJ improperly failed to employ a vocational expert to support a finding at step five of the

evaluation that the claimant was incapable of performing all work. The court remanded to give the Commissioner an opportunity to utilize the testimony of a vocational expert.

Because there is insufficient basis in the record to make a proper determination as to Eary's disability status from December 15, 1990 to January 24, 1993, remand for a new administrative hearing is appropriate. On remand, a new administrative hearing must be conducted with the assistance of a medical expert. Moreover, the ALJ must explain its conclusions based on all evidence in the record.

AND NOW, this day of June, 2001 it is **ORDERED** that:

- (1) Plaintiff's motion for summary judgment (docket entry #12) is **GRANTED** insofar as it seeks remand of plaintiff's claim;
- (2) Defendant's motion for remand (docket entry #15) is **GRANTED**; and
- (3) The matter is remanded to the Commissioner of Social Security for further proceedings in accordance with this Memorandum and Order.

Anita B. Brody, J.

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